

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Bail Appl..No. 4956 of 2007()

[CRIME NO.250/2007 OF VENGARA POLICE STATION]

PETITIONER/4TH ACCUSED

ABDUL RASAK, S/O. CHEMBAN ALAVI,
MULLANKUZHI HOUSE, P.O.MUNNIYUR (S), VENGARA.

BY ADV. SRI.P.SAMSUDIN

RESPONDENT: COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, VENGARA,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

B.A.No.4956 of 2007

Dated this the 14th day of August 2007

O R D E R

Application for anticipatory bail. The petitioner is the fourth accused. Altogether there are five accused persons. The crux of the allegations against the petitioner is that the accused, in furtherance of their prior concert, induced the de facto complainant to part with an amount of Rs.2,00,000/-. It was allegedly represented to the de facto complainant that an Adivasi person had got a treasure of gold which he would part with, if an amount of Rs.2,00,000/- were paid. All the accused together allegedly induced the de facto complainant to believe those false representations. He, accordingly, handed over an amount of Rs.2,00,000/-; but got, in return, not gold; but a heavy brass metal. He subsequently raised a complaint. Crime has been registered. Investigation is in progress. Accused 1 to 3 have already been arrested and enlarged on bail. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The learned counsel for the petitioner relying on the narration of the incident in the F.I statement contends that at the time when the amount was actually paid and the brass articles were handed over, there is no specific allegation of the presence of the petitioner. In these circumstances, the learned

counsel for the petitioner prays that the petitioner may be granted anticipatory bail. The learned Public Prosecutor opposes the application. It is submitted that specific allegations are there in the F.I statement which would indicate the complicity of the petitioner. At any rate, this is not a fit case where the discretion under Section 438 Cr.P.C can or ought to be invoked.

3. I have considered all the relevant inputs, the F.I statement has to be read as a whole and when so read, I have no hesitation to agree that there are elements of complaints against the petitioner also in the F.I statement. I am satisfied that this is not a fit case where the discretion under Section 438 Cr.P.C can or ought to be invoked. This is a fit case where the petitioner must, like the co-accused, appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007